

Introduced by Senator Margett

February 24, 2006

An act to amend Section 629.50 of the Penal Code, relating to interception of communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1714, as introduced, Margett. Interception of communications: order: application.

Existing law requires certain information to be included in an application for an order authorizing interception of electronic communication, including the oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, or the person designated to act as district attorney in the district attorney's absence.

This bill would require the judge to accept a facsimile copy of the signature of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney, or the person designated to act as district attorney in the district attorney's absence as an original signature.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 629.50 of the Penal Code is amended to
- 2 read:
- 3 629.50. (a) Each application for an order authorizing the
- 4 interception of a wire, electronic pager, or electronic cellular
- 5 telephone communication shall be made in writing upon the
- 6 personal oath or affirmation of the Attorney General, Chief

1 Deputy Attorney General, or Chief Assistant Attorney General,
2 Criminal Law Division, or of a district attorney, or the person
3 designated to act as district attorney in the district attorney's
4 absence, to the presiding judge of the superior court or one other
5 judge designated by the presiding judge. An ordered list of
6 additional judges may be authorized by the presiding judge to
7 sign an order authorizing an interception. One of these judges
8 may hear an application and sign an order only if that judge
9 makes a determination that the presiding judge, the first
10 designated judge, and those judges higher on the list are
11 unavailable. Each application shall include all of the following
12 information:

13 (1) The identity of the investigative or law enforcement officer
14 making the application, and the officer authorizing the
15 application.

16 (2) The identity of the law enforcement agency that is to
17 execute the order.

18 (3) A statement attesting to a review of the application and the
19 circumstances in support thereof by the chief executive officer,
20 or his or her designee, of the law enforcement agency making the
21 application. This statement shall name the chief executive officer
22 or the designee who effected this review.

23 (4) A full and complete statement of the facts and
24 circumstances relied upon by the applicant to justify his or her
25 belief that an order should be issued, including (A) details as to
26 the particular offense that has been, is being, or is about to be
27 committed, (B) the fact that conventional investigative
28 techniques had been tried and were unsuccessful, or why they
29 reasonably appear to be unlikely to succeed or to be too
30 dangerous, (C) a particular description of the nature and location
31 of the facilities from which or the place where the
32 communication is to be intercepted, (D) a particular description
33 of the type of communication sought to be intercepted, and (E)
34 the identity, if known, of the person committing the offense and
35 whose communications are to be intercepted, or if that person's
36 identity is not known, then the information relating to the
37 person's identity that is known to the applicant.

38 (5) A statement of the period of time for which the
39 interception is required to be maintained, and if the nature of the
40 investigation is such that the authorization for interception should

1 not automatically terminate when the described type of
2 communication has been first obtained, a particular description of
3 the facts establishing probable cause to believe that additional
4 communications of the same type will occur thereafter.

5 (6) A full and complete statement of the facts concerning all
6 previous applications known, to the individual authorizing and to
7 the individual making the application, to have been made to any
8 judge of a state or federal court for authorization to intercept
9 wire, electronic pager, or electronic cellular telephone
10 communications involving any of the same persons, facilities, or
11 places specified in the application, and the action taken by the
12 judge on each of those applications. This requirement may be
13 satisfied by making inquiry of the California Attorney General
14 and the United States Department of Justice and reporting the
15 results of these inquiries in the application.

16 (7) If the application is for the extension of an order, a
17 statement setting forth the number of communications
18 intercepted pursuant to the original order, and the results thus far
19 obtained from the interception, or a reasonable explanation of the
20 failure to obtain results.

21 (8) An application for modification of an order may be made
22 when there is probable cause to believe that the person or persons
23 identified in the original order have commenced to use a facility
24 or device that is not subject to the original order. Any
25 modification under this subdivision shall only be valid for the
26 period authorized under the order being modified. The
27 application for modification shall meet all of the requirements in
28 paragraphs (1) to (6), inclusive, and shall include a statement of
29 the results thus far obtained from the interception, or a reasonable
30 explanation for the failure to obtain results.

31 (b) The judge may require the applicant to furnish additional
32 testimony or documentary evidence in support of an application
33 for an order under this section.

34 (c) *The judge shall accept a facsimile copy of the signature of*
35 *any person required to give a personal oath or affirmation*
36 *pursuant to subdivision (a) as an original signature to the*
37 *application.*